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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

THE PEOPLE,

Plaintiff and Respondent,

v.

HAMID HANNANI,

Defendant and Appellant.

B168745

(Los Angeles County  
Super. Ct. No. BA210332)

APPEAL from a judgment of the Superior Court for the County of Los Angeles,  
Barbara R. Johnson, Judge. Affirmed as modified.

Flier and Flier, Theodore S. Flier and Andrew Reed Flier for Defendant and  
Appellant.

Bill Lockyer, Attorney General, Robert R. Anderson, Chief Assistant Attorney  
General, Pamela C. Hamanaka, Senior Assistant Attorney General, Herbert S. Tetef and  
Jennifer A. Jadovitz, Deputy Attorneys General, for Plaintiff and Respondent.

Hamid Hannani pleaded no contest to two counts of receiving stolen property. On appeal he contends his warrantless arrest lacked probable cause and the trial court erred in ordering him to pay direct victim restitution. We affirm the conviction, but vacate the restitution order.

### **FACTUAL AND PROCEDURAL BACKGROUND**

The evidence at Hannani's preliminary hearing established in August 2000 California Highway Patrol Investigator Larry Armendariz received information from the South San Francisco Police Department that stolen computer hard drives, identifiable by their serial numbers, could be found at General Procurement, a business in Laguna Niguel. Armendariz investigated and discovered the owner of General Procurement had purchased the hard drives from a company named Q Digital and shipped them to Mexico. Armendariz contacted Q Digital, whose owner told him the hard drives had been purchased from a company in Irvine named Components Direct. Armendariz contacted Components Direct and was told by someone named "Nick" that the hard drives had been purchased from an individual in downtown Los Angeles.<sup>1</sup> Nick told Armendariz that CI-1 had contacted him that very morning to ask if Components Direct wanted to buy more hard drives. Armendariz arranged for Nick to phone CI-1, in Armendariz's presence, to ask about purchasing additional hard drives and to ask for serial numbers for the hard drives CI-1 had for sale. However, CI-1 became "a little irate," hung up on Nick and did not provide the requested information.

Armendariz and Highway Patrol Officer Theresa Pines visited CI-1's place of business a few days later. In response to Armendariz's questions CI-1 insisted the hard drives he had sold Components Direct were not stolen, but refused to say where he had purchased them. Armendariz placed CI-1 under arrest.

After CI-1 was arrested, his wife, CI-2, approached Officer Pines and asked why her husband had been arrested. Pines told CI-2 that CI-1 had been arrested "for the stolen

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<sup>1</sup> This person was referred to as "CI-1" at the preliminary hearing and in the parties' briefs on appeal.

computers.” CI-2 then told Pines they had purchased the hard drives from “a person by the name of Hamid.” She described Hamid as “a male person with black hair, short in stature, and approximately 45 to 48 years of age.” CI-2 showed Pines photocopies of checks made out to Hamid with “purchase hard disks” written in the memo area of the checks. The checks had “void” written on them. CI-2 explained that Hamid had asked for cash instead of checks, but CI-2 had written the checks anyway, then voided them, so that she would have a record of the transactions.

Later that day CI-2 telephoned Pines and provided her with two telephone numbers for Hamid. She also told Pines that Hamid lived on 15th Street in Santa Monica, although she did not know the house number. Pines passed on the information to Armendariz.

A few days later CI-1 told Armendariz he had purchased the hard drives from Hamid Hannani, who had come to CI-1’s business in a black Mercedes sedan and offered the hard drives for sale. CI-1 also told Armendariz he “knew something was wrong” with the hard drives “based on the price.” Armendariz subsequently determined Hannani lived on 15th Street in Santa Monica and that a Mercedes vehicle was registered to Hannani at that address.

In early September 2002 Armendariz set up an undercover operation with the help of a fellow California Highway Patrol investigator Ray San Miguel, who phoned Hannani at one of the phone numbers provided by CI-2. San Miguel told Hannani he was interested in purchasing computer parts from him and attempted to set up a meeting. Although Hannani initially put San Miguel off, saying it was not a good time, he ultimately agreed to meet with him.

San Miguel met with Hannani on September 30, 2000. Hannani was driving a Mercedes sports utility vehicle (SUV) and met them in the parking lot of a strip mall in Los Angeles. San Miguel observed multiple Compaq laptop computers in the SUV at the time of the meeting. He told Hannani he was in the business of buying computer parts and selling to buyers outside the United States. During the conversation Hannani told San Miguel ““You are going to go to jail if you sell that in the United States.””

On October 18, 2000 Armendariz and several other officers conducted surveillance on Hannani's home in Santa Monica. They followed Hannani when he left the house in the SUV he had used for the meeting with San Miguel. Hannani parked outside a commercial building in Los Angeles and unloaded several boxes of Compaq laptop computers from his vehicle. Armendariz directed Pines to place Hannani under arrest. In a search incident to that arrest it was discovered the computers in the vehicle, as well as additional computers and monitors in the adjacent store, were stolen.

Hannani was charged with two counts of receiving stolen property. (Pen. Code, § 496, subd. (a).) After a preliminary hearing and an unsuccessful motion to set aside the information for lack of probable cause pursuant to Penal Code section 995,<sup>2</sup> Hannani pleaded no contest to both counts. He was sentenced to three years of formal probation and ordered to spend three days in county jail. The court imposed a \$200 restitution fine pursuant to Penal Code section 1202.4, subdivision (b), and, following a restitution hearing, ordered \$23,000 direct victim restitution to Compaq Computers and ViewSonic Corporation pursuant to Penal Code section 1202.4, subdivision (f).

## **DISCUSSION**

### *1. There Was Probable Cause for Hannani's Arrest*

Hannani contends there was no probable cause for his arrest without a warrant because the arresting officers did not know the boxes he was unloading contained stolen property and the information that was known to them would not have led a reasonable person to believe he had committed a crime.

#### *a. Standard of Review*

A peace officer may arrest a person without a warrant whenever he has reasonable cause to believe that the person arrested has committed a felony. (Pen. Code, § 836, subd. (a)(3).) “‘Reasonable cause’ has been defined as ‘that state of facts as would lead a man of ordinary care and prudence to believe and conscientiously entertain an honest and

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<sup>2</sup> Penal Code section 995, subdivision (2)(B), provides that an information may be set aside if “the defendant has been committed without reasonable or probable cause.”

strong suspicion that the person is guilty of a crime.’ [Citations.] No exact formula exists for determining reasonable cause, and each case must be decided on the facts and circumstances presented to the officers at the time they were required to act. [Citation.]” (*People v. Fein* (1971) 4 Cal.3d 747, 752, disapproved on other grounds by *People v. Palaschak* (1995) 9 Cal.4th 1236,1242.)

“Determining whether an officer had cause to arrest requires two analytically distinct steps, each with its own standard of review. First, the court ascertains when the arrest occurred and what the arresting officer then knew; second, the court decides whether the officer’s knowledge at the time of arrest constituted adequate cause. On appeal, a reviewing court must accept the trial court’s express or implied findings on disputed factual issues in the first step of the inquiry if they are supported by substantial evidence, but a reviewing court must use its independent judgment to review the second step of the inquiry. [Citations.]” (*People v. Price* (1991) 1 Cal.4th 324, 409.)

b. *The Evidence Known to Armendariz Was Sufficient to Lead a Reasonable Person to Conclude Hannani Had Committed a Crime*

Hannani’s arrest was based on far more than an uncorroborated tip from an unreliable informant, as Hannani argues. Armendariz obtained information from an officer in San Francisco including the serial numbers of certain stolen hard drives, traced the hard drives by serial numbers to the business of CI-1 and CI-2 and was told they had obtained them from Hannani. The information obtained from CI-2 was supported by the voided checks she produced, as well as the fact Hannani fit the description she gave for “Hamid.” Accordingly, the trial court’s implied finding that CI-2 was reliable is supported by substantial evidence. (See *People v. Price*, *supra*, 1 Cal.4th at p. 409.) Although not overwhelming, the chain of evidence obtained by Armendariz was sufficient to lead a reasonable person to conclude Hannani had committed the crime of receiving stolen property.

2. *The Trial Court Erred in Ordering Restitution Pursuant to Penal Code Section 1202.4, Subdivision (f)*

Article I, section 28, subdivision (b) of the California Constitution, part of the Victims' Bill of Rights adopted by the voters in 1982, provides, "It is the unequivocal intention of the People of the State of California that all persons who suffer losses as a result of criminal activity shall have the right to restitution from the persons convicted of the crimes for losses they suffer." Penal Code section 1202.4, subdivision (f), states, "In every case in which a victim has suffered economic loss as a result of the defendant's conduct, the court shall require that the defendant make restitution to the victim or victims in an amount established by court order, based on the amount of loss claimed by the victim or victims or any other showing to the court." The trial court ordered Hannani to pay restitution of \$23,000 pursuant to section 1202.4, subdivision (f).

The People argue the trial court correctly ordered restitution to the victims injured by the theft of the computers and monitors, citing *People v. Carbajal* (1995) 10 Cal.4th 1114, 1121, in which the Supreme Court held, "California courts have long interpreted the trial courts' discretion to encompass the ordering of restitution as a condition of probation even when the loss was not necessarily caused by the criminal conduct underlying the conviction. Under certain circumstances, restitution has been found proper where the loss was caused by related conduct not resulting in a conviction [citation], by conduct underlying dismissed and uncharged counts [citation], and by conduct resulting in an acquittal [citation]. There is no requirement the restitution order be limited to the exact amount of the loss in which the defendant is actually found culpable, nor is there any requirement the order reflect the amount of damages that might be recoverable in a civil action. [Citation.]" They contend restitution was proper because the victims' losses were related to Hannani's conduct.

Although we agree that Hannani's conduct in acting as a fence was related to the theft of the computers, we cannot say Compaq and ViewSonic's losses were "the result

of” such conduct within the meaning of the restitution statutes.<sup>3</sup> (*People v. Scroggins* (1987) 191 Cal.App.3d 502, 506 [it was error to order restitution to burglary victims by defendant convicted of receiving stolen property and never charged with the burglaries]; *In re Maxwell C.* (1984) 159 Cal.App.3d 263, 265-266 [minor improperly ordered to pay restitution to victims of burglary when he was found only to have received the stolen property].) None of the cases cited by the People are to the contrary; each found restitution proper when it was based on conduct that, although uncharged or unproven, was at least committed by the defendant himself. (See *People v. Carbajal, supra*, 10 Cal.4th at p. 1121 and cases cited therein; *People v. Ortiz* (1997) 53 Cal.App.4th 791, 799 [restitution properly ordered based on estimate of victim’s lost sales caused by defendant’s sale of counterfeit videotapes].) In the present case there has been no suggestion Hannani actually stole the computers himself.

#### **DISPOSITION**

The order imposing a victim restitution fine is vacated, and the judgment is modified accordingly. As modified, the judgment is affirmed.

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PERLUSS, P. J.

We concur:

JOHNSON, J.

WOODS, J.

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<sup>3</sup>

The court may have had the power to order Hannani to pay restitution to the victims of the crime he facilitated as a nonstatutory condition of probation. (See *People v. Birkett* (1999) 21 Cal.4th 226, 235 and cases cited therein [“the court, when imposing conditions of probation, could require the probationer to do acts not otherwise mandated by law, if such conditions were ‘reasonably related to the crime of which the defendant was convicted . . . .’ [Citation.]”].) However the restitution order we are reviewing was explicitly, and incorrectly, based entirely on Penal Code section 1202.4, subdivision (f).